

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 24 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

CRAIG BOLTMAN,

Plaintiff - Appellant,

v.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANIES,

Defendant - Appellee.

No. 05-16766

D.C. No. CV-04-0119-HDM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted October 16, 2007^{**}
San Francisco, California

Before: TROTT and N.R. SMITH, Circuit Judges, and SHADUR^{***}, Senior
Judge.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

^{***} The Honorable Milton I. Shadur, Senior United States District Judge for the Northern District of Illinois, sitting by designation.

Appellant Craig Boltman (“Boltman”) appeals the district court’s order granting summary judgment in favor of appellee State Farm Mutual Automobile Insurance Companies (“State Farm”). Boltman argues there is a genuine issue of material fact as to whether State Farm violated the Age Discrimination in Employment Act, 29 U.S.C. §§ 621–634, and as to whether State Farm retaliated against him in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a), when State Farm fired Boltman in September of 2003.

Boltman, however, failed to make even the minimal showing necessary to establish a *prima facie* case of age discrimination because he was clearly not performing his job in a satisfactory manner. See Wallis v. J.R. Simplot Co., 26 F.3d 885, 891 (9th Cir. 1994). Even if Boltman did make such a minimal showing, State Farm articulated a legitimate nondiscriminatory reason for firing Boltman, and Boltman failed to present any evidence State Farm’s articulated reason was a pretext for discrimination. See Pottenger v. Potlatch Corp., 329 F.3d 740 (9th Cir. 2003). Furthermore, Boltman’s Title VII claim fails because he presented no evidence that he was engaged in any activity protected under Title VII. See Wallis, 26 F.3d at 891.

AFFIRMED.